

Flagtail Fire Recovery Project

Record of Decision and Non- significant Forest Plan Amendment #56

USDA Forest Service
Pacific Northwest Region

Malheur National Forest
Blue Mountain Ranger District

Grant County
John Day, Oregon
April 2004

Table of Contents

Record of Decision and Non-significant Forest Plan Amendment #56.....	R-1
Introduction	R-1
Purpose and Need/Proposed Action	R-2
Environmental Impact Statement	R-3
Consultation with Tribes.....	R-3
Consultation with Government Agencies.....	R-4
Issues	R-4
Alternatives Considered in Detail.....	R-5
Decision and Rationale	R-7
Active v. Passive Management	R-8
Fuels.....	R-10
Wildlife.....	R-10
Soil.....	R-11
Water	R-12
Scenery	R-12
Socio-Economics	R-12
Cumulative Effects from Ongoing and Proposed Activities	R-13
Consultation/Conferencing with USFWS and NOAA	R-14
Legal Requirements and Policy	R-14
Other Policy or Guiding Documentation	R-15
Public Participation.....	R-15
The Environmentally Preferable Alternative	R-16
Management Requirements, Constraints, and Mitigation Measures	R-16
Monitoring	R-17
Forest Plan Consistency.....	R-17
Implementation	R-21
Appeal Rights	R-22
Contact Persons	R-23

Record of Decision and Non-significant Forest Plan Amendment #56

Introduction

This Record of Decision (ROD) documents my decision and rationale for the selection of Alternative 5 for the Flagtail Fire Recovery Project. It also includes a non-significant amendment to the Malheur Forest Plan. Amendment #56 re-delineates Dedicated and Replacement Old Growth areas and allows for a snag distribution that better meets wildlife needs. An emergency situation determination for economics has been granted for a large portion of the project area that is experiencing rapid deterioration. This is discussed in greater detail in the Appeal Rights section at the end of this document.

In July 2002, the Flagtail Fire burned approximately 8,200 acres, of which 7,120 acres are on the Blue Mountain Ranger District of the Malheur National Forest. The Flagtail Fire Recovery Project area is comprised of these 7,120 acres and is located approximately 25 miles southwest of John Day, Oregon. Approximately half of the project area lies within a Wildland Urban Interface area because of structures located on adjacent private land.

The project area lies within four subwatersheds that are part of the Upper Silvies Watershed. The Upper Silvies Watershed Analysis (WA) was completed in 2001; the FEIS will serve as an update to the existing condition in the WA. The

Silvies sub-basin is one of six sub-basins feeding into Malheur Lake, which is located at the northern end of the Great Basin. It has no connection to the ocean and contains no anadromous fish. The Flagtail Fire project area does not contain bull trout, steelhead or Chinook salmon. Snow Creek is the only stream within the project area included on the Oregon DEQ 303(d) list. It is listed for summer rearing temperature.

The Flagtail Fire Recovery project area falls mostly within the warm/dry plant association group that is characterized by open grown ponderosa pine to multistoried mixed conifer stands dominated by Ponderosa pine. By 2002, the condition of these stands was very different from historic conditions. Due to fire exclusion as well as previous harvest, most of the area was overstocked with a significant shift to Grand Fir and Douglas fir. More than 90% of the area burned with moderate to high severity resulting in 60 to 100% mortality.

The two major soil types in the project area include residual loam from sedimentary rock and volcanic ash soils. The shallow soils in the non-forested Bald Hills area are highly erosive. Slopes over 30% are moderately erosive when the ground cover is removed; approximately one quarter of the project area falls into this category.

Record of Decision

Forest Plan land allocations within the project area include General Forest (MA 1), Rangeland (MA 2), Dedicated/Replacement Old Growth (MA 13), Visual Corridor (MA 14), Riparian Areas (MA 3), and Riparian Habitat Conservation Areas (RHCAs). There are no inventoried roadless areas within or adjacent to the project area.

Additional recovery projects have been completed or are on-going within the Flagtail Fire Recovery Project area (FEIS, Appendix J). These projects were signed under the Categorical Exclusion authority and include:

- Native hardwood and conifer planting was completed on about 25 acres along more than 6 miles of the Silvies River, Snow Creek and Jack Creek to provide shade and bank stability. An additional 190 acres of riparian areas that were previously forested with conifers were re-planted to native conifers. Native conifers were also planted on 190 acres of severely burned upland south slopes to accelerate stand re-establishment while vegetation competition was low.
- Single pieces and aggregates of coarse wood have been placed in 6 miles of streams and ephemeral channels to reduce erosion and sediment transport, as well as to improve channel integrity and fish habitat. Wood placement is to be completed in an additional 21 miles.
- Hazard tree removal has occurred at the Bear Valley Work Center, and along County Road 63, Forest Road 2400011, and portions of Forest Roads 2400865 and 2400017.

Purpose and Need/Proposed Action

Several post-fire reviews of the burned area showed that actions were needed to move the resource conditions closer to the desired future conditions and address the management direction provided by the Malheur Forest Plan, as amended. The stands in the fire area had altered from their historic conditions. Needs were identified to re-establish upland vegetation closer to its historic stand densities and species composition and, particularly in the wildland urban interface, to ensure that tree densities and fuel loadings remained within historic levels. There were needs for timber to provide economic benefits to the local community and for safe access in the area. Also, there were needs to reduce the effects of the existing road system on wildlife and water quality, and to replace Dedicated and Replacement Old Growth areas that had been degraded by the fire.

My proposed action consisted of a variety of activities including fuel reductions, timber harvest including hazard trees along open roads, road closures and decommissioning, reforestation, and designation of suitable DOGs and ROGs. The needs for the proposed action are derived from the differences between current conditions and desired conditions. Desired conditions are based on Forest Plan direction and management objectives, and on recommendations from the Upper Silvies Watershed Analysis (USDA Forest Service 2001).

The purposes of and needs for action in the Flagtail Fire Recovery Project area (Figure 1, Map Section) are to:

- Reduce future fuel loadings to be responsive to the National Fire Plan,
- Capture economic value of the fire-killed and damaged trees expected to die,

- Provide safe and adequate road access in the fire area,
- Reduce the effects of roads on wildlife and water quality,
- Re-establish upland vegetation, and
- Designate suitable Dedicated and Replacement Old Growth areas to replace those degraded by the fire.

The two broad categories of purpose for the project are: the acceleration of ecosystem restoration, and timely commodity extraction. Each of the existing and desired conditions relevant to providing improved conditions and accomplishing commodity extraction for jobs and income can be linked to the purpose for the proposed action.

Environmental Impact Statement

I determined that proposed restoration actions and their effects could best be analyzed and disclosed to the public through an Environmental Impact Statement (EIS). A Notice of Intent to prepare an EIS was published in the *Federal Register* on February 6, 2003 and a correction was published on February 26, 2003. This was followed by release of the Flagtail Fire Recovery Project Draft Environmental Impact Statement (DEIS) in June 2003. The Notice of Availability for comment on the DEIS was published in the *Federal Register* on July 3, 2003. The Notice of Availability for the final EIS (FEIS) was published in the *Federal Register* on March 5, 2004.

Consultation with Tribes

Consultation with the Confederated Tribes of the Umatilla Indian Reservation, the Burns Paiute Tribe, and the Confederated Tribes of the Warm Springs Reservation of Oregon occurred prior to my decision (FEIS, page 29). Under existing treaties, these tribes retain certain rights related to a

variety of resources, including fish. The treaties contain the following provision:

“That the exclusive right of taking fish in the streams running through and bordering said reservation is hereby secured to said Indians, and at all other usual and accustomed stations, in common with citizens of the United States, and of erecting suitable house for curing the same; also the privilege of hunting, gathering roots and berries, and pasturing their stock on unclaimed lands, in common with citizens, is secured to them.” (*Treaty with the Walla Walla, Cayuse, and Umatilla Tribes*, June 9, 1855; and *Treaty with the Tribes of Middle Oregon*, June 25, 1855).

The project area falls within lands ceded by the Confederated Tribes of the Warm Springs Reservation and within lands that have an overlap of use with the Umatilla Tribes. These tribes have reserved rights to anadromous fish, and Federal Court decisions have specifically established that the tribes have treaty rights to an equal share of the Columbia Basin fishery resource (CRITFC 1995, vol. 1, pages 4-1 – 4-3).

My decision is guided by the federal government’s treaty responsibility to these Tribes. As treaties are the law of the land, the Forest Service has an obligation to manage National Forest resources in a manner that harmonizes the Federal trust responsibility to tribes and the statutory mission of the agency. This is one of several legal obligations that I considered as I made my decision, and consultation with the tribes provided me with valuable information in making that decision. In November 2002, the Blue Mountain Ranger District staff contacted the three tribes that have rights or interests in the Flagtail Fire Recovery area: the Confederated Tribes of the Warm Springs Reservation, the Confederated Tribes of the Umatilla Indian

Record of Decision

Reservation, and the Burns Paiute Tribe. Based on a government-to-government relationship, as directed in Executive Order 13175 (EO 13175), Consultation and Coordination with Indian Tribal Governments, November 6, 2000, the purpose of the contact was to exchange information, answer questions, and to work closely and continuously with each other to integrate tribal rights and interests in the planning process. In March and April (2003), meetings to discuss the Flagtail Project were held with representatives from the Burns Paiute Tribe and the Confederated Tribes of the Warm Springs Reservation (Flagtail Project Record). The Burns Paiute tribe expressed general concerns regarding cultural plant habitat and access management within all areas burned in the fire season of 2002. The effects of the Flagtail Project on these tribal concerns are discussed under Culturally Important Plants in the Botany section of Chapter 3 of this EIS. No culturally important plants in riparian habitat will be affected because there is no harvest activity planned within them. Overall, motorized access within the project area will be reduced but I am making sure that adequate access remains. Since the locations of important sites were not known, only vehicle access in general was discussed. No concerns were raised in the discussion with the Confederated Tribes of the Warm Springs Reservation. A meeting held in October 2003 with representatives of the Confederated Tribes of the Umatilla Indian Reservation provided general comments on the overall NEPA process. No concerns were received specific to the Flagtail Project. Copies of the DEIS were mailed to the Tribes in July 2003.

Consultation with Government Agencies

Coordination has also occurred with federal, state, and local government officials (see also Chapter 4). The National Oceanic and Atmospheric Administration-Fisheries (NOAA), and U.S. Fish and Wildlife Service have been kept informed of proposed activities. Information has been provided to and exchanged with state agencies and Grant County.

Issues

In response to my proposed action, the public and the Forest Service identified 5 significant issues. A sixth issue, scenery, was elevated from “other analysis issues” to a significant issue based on analysis conducted between Draft and Final EIS, and as a response to public involvement. Significant issues were then used to develop alternatives to the Proposed Action. Issues include:

Issue #1 – Fuels

At the heart of this issue is the scientific controversy relevant to the benefits of using salvage harvest to reduce fuels in order to reduce potential effects of future fire events. Some advocate a passive approach to fuels management in burned areas and recommend natural processes are best for management of fuels. Others suggest that salvage harvest is the best way to reduce the potential for another cycle of heavy fuel accumulations therefore, limiting future management opportunity to use prescribed fire to restore the landscape to historical conditions.

Issue #2 - Wildlife

Several public letters raised concern over the snag strategy. Wildlife species use burned forest habitats differently than live, green forests. In post-fire habitats,

minimum Forest Plan snag standards may not be sufficient to assure use by all primary cavity excavators. Snag density, size and distribution influence use levels and vary by individual species. Salvage logging could potentially have negative impacts on cavity dependent species, particularly such species as the black-backed woodpecker. The alternatives retain varying levels and sizes of snags.

Issue #3 - Soil

Concern has been expressed that using mechanized equipment to reduce future fuels through timber sales would increase soil erosion and decrease soil productivity (mainly through compaction, displacement of soil, or a decrease in ground cover). Ground-based yarding systems may increase erosion on soils burned with high and moderate severity.

Issue #4 - Water

The issue centers on whether or not the salvage harvest of fire-killed trees is consistent with the need to maintain aquatic habitats. This issue is linked to the current watershed and stream channel conditions resulting from the fire but also includes concern over conditions from a variety of past and ongoing activities such as grazing, logging and road building and the resulting transportation system. Some suggest that any ground disturbing activity following a fire like Flagtail should be avoided. Others suggest that some level of activity can be conducted, such as salvage harvest, without interrupting the processes of long-term ecosystem recovery. While there is no immediate ecological reason to salvage harvest fire-killed trees, there are opportunities to improve watershed function, such as relocating roads out of riparian areas, replacing drainage structures, and decommissioning roads near streams.

Issue #5 - Scenery

The Flagtail Fire has reduced the visual quality rating in the visual corridor along Grant County Highway 63 from a Visual Quality Objective (VQO) of Foreground Partial Retention to Modification. Harvest of fire-killed trees in units located in the foreground could further reduce the visual quality rating to Maximum Modification.

Issue #6 - Socio-Economics

Due to decay and checking of wood, there is a need for immediate harvest to recover the economic value from fire-killed trees. The design of restoration treatments may make timber harvest uneconomical. Economically viable timber sales are important to local communities. The social and economic well being of residents and local governments is dependent on employment and revenues generated from timber sales, fuel treatment, and reforestation.

Fifteen additional issues were considered in the assessment of effects, but were not used as the basis for alternative development as they were resolved in other ways (see FEIS, Chapter 1).

Alternatives Considered in Detail

Four action alternatives and a no action alternative were analyzed in the FEIS. Ten additional alternatives were considered in the FEIS and dropped from detailed consideration (FEIS, pages 44-47). The four action alternatives considered in the FEIS examine varying combinations and degrees of recovery activities and were developed to address the significant issues and the purpose and need. For additional details on these alternatives, see the FEIS (Chapter 2, Alternatives 1 through 5).

Record of Decision

Alternative 1 – No Action

The purpose of this alternative is to allow current processes to continue, along with associated risks and benefits, in the Flagtail analysis area. The “no action” alternative means the proposed project (which includes all activities identified in the proposed action) would not take place in the Flagtail analysis area at this time. Alternative 1 is designed to represent the existing condition. It serves as a baseline to compare and describe the differences and effects between taking no action and implementing action alternatives. Current management activities taking place in the area would continue if Alternative 1 were selected, but no new activities would take place. Only those management activities considered part of normal maintenance requirements, or those allowed under previous decision documents would continue.

Alternative 2 – Proposed Action

This alternative was designed to maximize recovery of the economic value of fire killed and damaged trees and to reduce future fuel loadings. Alternative 2 would salvage harvest the largest area of the action alternatives, approximately 4,340 acre. By intensively treating the burned acres, future fuel loads will be within their historical range, reducing the impacts of future wildfires on the environment and restoring health to fire-adapted ecosystems. In all salvage harvest units, snags 21 inches DBH or greater would be retained at the Forest Plan standard of 2.39 snags per acre to provide habitat for cavity dependent species. Hazard trees along open roads would be removed to provide safe and adequate access; designated roads would be closed or decommissioned to reduce the effects of roads on wildlife habitat and water quality; trees would be planted to re-establish upland vegetation; and suitable Dedicated and Replacement Old Growth

areas would be designated to replace those degraded by the fire.

Alternative 3

In post-fire habitats, minimum Forest Plan snag standards may not be sufficient to assure use by all primary cavity excavators. Alternative 3 was designed to leave higher levels of snag habitat distributed in a way that accommodates a broader range of cavity excavator species while also implementing the goals and objectives of the National Fire Plan. On average 13 snags per acre would be randomly distributed across harvest areas. This alternative would reduce fuel loadings, but to a lesser extent than Alternative 2, and would meet other identified needs, including capturing economic value of the killed and damaged trees, providing safe and adequate access, reducing the effects of roads on wildlife habitat and water quality, re-establishing upland vegetation, and designating suitable Dedicated and Replacement Old Growth areas to replace those degraded by the fire.

Alternative 4

Alternative 4 was developed to reduce fuel loadings and provide local employment without commercial timber harvest, in response to comments generated during the scoping process that advocated natural recovery processes. Alternative 4 does not propose commercial timber harvest, but does propose treatment of trees 8-inch DBH and smaller to reduce future fuel loadings. Grapple piling would occur but no ground-based yarding would be done. Alternative 4 provides no timber to the economy, but fuels treatment would generate employment and revenue. All snags greater than 8-inch DBH would be retained under Alternative 4 to provide primary cavity excavator species. This alternative would also meet the other identified needs, including providing safe and adequate access, reducing the effects of roads on

wildlife habitat and water quality, re-establishing upland vegetation, and designating suitable Dedicated and Replacement Old Growth areas to replace those degraded by the fire.

Alternative 5 – Preferred and Selected Alternative

Alternative 5 was designed to more closely mimic snag distributions expected at the landscape level. This snag distribution was derived from the Regional snag inventory data in DecAID (Mellen et al. 2002). This data indicates that dry forests typically supported lower snag levels than those created by the Flagtail Fire. In addition, snag inventory data suggests that snag levels (snag density and size) varied greatly across the landscape based on natural site conditions. Some areas likely had high concentrations of snags and other areas had few or no snags. In this alternative, snag levels vary from 2.39 snags per acre (21-inches DBH and larger) where available to 13 snags per acre (varying sizes and including 2.39 snags per acre 21-inch DBH and larger) where available in harvest areas. Snag level prescriptions varied between salvage units based on a variety of criteria including forest type, aspect and slope, visual quality in the County Highway 63 visual corridor, proximity to the Wildland Urban Interface, and economics.

This alternative would also reduce future fuel loadings and meet the other identified needs, including capturing economic value of the killed and damaged trees, providing safe and adequate access, reducing the effects of roads on wildlife habitat and water quality, re-establishing upland vegetation, and designating suitable Dedicated and Replacement Old Growth areas to replace those degraded by the fire.

Decision and Rationale

It is my decision to select Alternative 5 as the Forest Service recovery plan for the Flagtail Fire area. For a detailed discussion of all the facets of Alternative 5, see FEIS, pages 63 to 69.

In making this decision, I carefully considered the comments received about the proposed recovery project and the Flagtail Fire area.

Some members of the public said that many of the resource values had been degraded by the fire and that the best use for the burned trees was to log them and put a community back to work that is suffering from a high unemployment rate.

Others said that the fire had done enough damage to the landscape and that large scale commercial harvest would set the land even farther back from recovery; that burned trees provide a special habitat and letting the land heal over time was the best way to deal with the damage that the fire had caused.

I recognized that the public was passionate about what was best for the land and the community, and that there was no management strategy that would totally meet all the concerns that were expressed.

I have selected an alternative that addresses all of these concerns, though not to the degree that might satisfy these conflicting viewpoints. Alternative 5 balances the need to capture the most volume while providing for snag and burned habitat dependent species. It provides community stability while providing economic recovery to the government to allow for restoration work needed in the fire area such as road reconstruction, road decommissioning, and

Record of Decision

culvert removal. More than half of the project area is within the boundary of a wildland urban interface. This alternative will reduce standing fuel today so that future downed fuel loadings will remain within historic levels. And while both commercial harvest and fuel reduction activities will have some adverse impacts to the land, these impacts are within Forest Plan standards and will not significantly set back the ecological recovery of the fire area.

Before making this decision, I evaluated and balanced many factors. The first crossroad I encountered was whether active or passive management would be the best management strategy.

Active v. Passive Management

A concern that arose early in the process was how to manage a burned area. Scientific literature exists that could lead the reviewer to conclude either active or passive management may be best, depending upon circumstances. Dr. James McIver of the Blue Mountains Natural Resource Institute (BMNRI) wrote that: "...while Beschta et al., (1995) comment that 'there is no ecological need for intervention on the post-fire landscape,' and that post-fire logging, reseeding, and replanting should be conducted only under limited conditions, they also state that there is a lack of knowledge pointing to detrimental ecological effects of salvage harvest measured in association with any particular wildfire." (McIver and Starr, 2001) Similarly, in his response to Beschta et al., Everett (1995) comments on the lack of good information, but states that the 'custodial' approach advocated by Beschta may in many cases be less desirable than more active management because of the possible soil degradation in the absence of seeding, and because of possible fuel

buildup in the absence of timber harvest." In designing my decision, I have attempted to incorporate ideas presented by both Beschta and Everett as well as the scientific literature described in the Bibliography, Chapter 5 of the FEIS. I am also including actions to the decision that are designed to help fill information voids on the debate regarding active or passive management (FEIS, pages 81-83).

The Flagtail Fire changed the biological and physical conditions of the area. Thousands of acres of trees were killed that provided cover and forage for wildlife; timber for future harvest, as well as seed sources for new forests; and shade to streams. Scenic values were degraded, as well as the safety of forest visitors and permittees due to the vast acreage of standing dead trees. Many of these detrimental conditions will not self-correct in an acceptable period of time. In my judgment, active management is necessary.

Through history, fire has played a major role in the project area. These fires were generally frequent, low intensity fires that reduced ladder fuels and stand densities by killing small trees. Like the Summit Fire in 1996, the Flagtail Fire was also an uncharacteristic wildfire. The high fire severity across much of the fire area was due to unnaturally high fuel loads, largely due to our past fire suppression efforts and harvest activities. If many of the burned trees are not removed, there is a significant risk that: 1) the safety of forest visitors and permittees in the fire area will be compromised, 2) future fuel loads will be just as high or higher than they were before the Flagtail Fire, and 3) another fire with similar or greater devastating results will burn. If such a fire burns, investments in recovery efforts and favorable gains in cover and habitat for wildlife, reforestation, and scenery characteristics would be lost.

Historically, warm-dry biophysical environments (approximately 80% of the project area) experienced low to moderate severity wildfires. It is important to reduce fuel loads and fuel continuity within the wildland urban interface to lessen the risk of wildfire burning onto private land adjacent to the National Forest and threatening private structures. It is also important to reduce fuel loads in these biophysical environments and decrease the risk of future fires that would consume reforestation investments. This fire burned large areas of forest that, historically, were not as adversely affected by fires.

In order to pursue active management, I have to make this decision now. Commercial salvage is the most practical option for removing trees ten inches and greater – and commercial harvest can only be accomplished while the material has commercial value. In the Summit Fire, 25% of the commercial value was lost to deterioration in a span of 9 months. If I had decided not to remove some of the material now, I would not likely be able to remove it later in an efficient manner.

In weighing this decision, I considered both fuel characteristics (amount, size, arrangement, continuity, and moisture content) and the likelihood of ignition. Although the majority of this material is in the form of standing snags today, most of this material is expected to be on the ground within 20 years. Data from the fire area indicate that expected fuel loads in 20 years would be 3-7 times higher than historic levels (FEIS, page 126). A severe reburn would likely kill or set back any riparian or coniferous vegetative recovery. High fuel loads would also pose problems associated with access and movement within the fire area for the grazing permittee and the outfitter guide permittee. Based on these conditions, I concluded that

active management is an appropriate course of action.

Implementing the salvage harvest portion of this decision will reduce fuel loadings from materials generally 10 inches and larger in diameter. In much of the fire area, heavy fuel loading of material 8-10 inches in diameter will still remain. Although this material is standing now, much of it will begin to fall over in the next 10 years. Additional site-specific fuel treatment needs, such as grapple piling and hand piling and burning, are included in this decision. I have included these actions as a part of the action alternatives base on results of monitoring in the Summit Fire area (Appendix E, Sediment Export From Logging Units During Summit Fire Salvage (Draft)).

I would like to reduce fuel loadings to the point where fire can be returned to its natural role within the hot dry and warm-dry biophysical environment. This requires that fuel loads be low enough to allow fire to burn through stands without severely damaging them. It may be several decades before those reduced fuel loadings can be achieved.

The Flagtail Fire Recovery Project alone will not bring about full recovery to the fire area. Future activities such as prescribed fires, thinning timber stands, regulating cattle grazing, additional reforestation, large wood addition to streams, and aspen protection will likely be needed. Monitoring the project area will enable managers to know what actions need to occur, as well as where and when.

After I concluded that active restoration was appropriate, I weighed the pros and cons of each alternative based on the significant issues listed above. The following is a discussion of these issues and my conclusions.

Record of Decision

Fuels

Alternative 1 would not have reduced any future fuel loading and Alternative 4 would have reduced only the smaller diameter standing dead. These alternatives would have left all of the standing dead greater than 8 inches. Over the next few decades, as these trees fell and new vegetation grew up through it, high fuel loadings would be fairly continuous across the fire area. This is unacceptable particularly in the wildland urban interface. Alternatives 2, 3, and 5 would also reduce the small standing dead trees 8 inches and smaller. Alternative 2 would result in the salvage harvest of 4,340 acres and reduce future fuel loadings to the lowest levels of all the alternatives.

Alternative 3 would have resulted in salvage of 3,330 acres and would have left the area within the historic fuel loadings (FEIS page 126, Table FF-3). Alternative 5 will result in the salvage harvest of 3,920 acres and also leaves those acres within the historic range of fuel loadings. Because snags will be left in a density distribution pattern that more closely mimics historic patterns, when these snag fall, the fuel loadings will more closely match historic arrangements.

Wildlife

Wildlife species use burned forest habitats differently than live, green forests. In post-fire habitats, minimum Forest Plan standards may not be sufficient to assure use by primary cavity excavators. Regional Forester Eastside Forest Plans Amendment #2 directs Forests to use the best available science to determine snag numbers (FEIS, page 164). I decided to use the recently completed DecAID (Mellen et al. 2003) as an advisory tool to help me evaluate the effects of the alternatives on species that use snags and large down logs. The DecAID tool is currently one of the best sources of information on dead wood habitats because

it synthesizes published literature, research data, wildlife databases, inventory data, and expert judgment and experience.

DecAID was used in combination with other research available on snags and dead wood habitats, as cited in the reference section of the Final EIS. Analysis focused on snags greater than or equal to 10 inches DBH, because generally dead wood dependent species prefer larger snags to smaller ones.

In the Draft EIS, the effects analysis focused on wildlife use data and it did not provide me with enough information to make a decision on the appropriate level of habitat to leave. I recognize that the more snags we leave, the greater the number of animals the area can support; however, I felt uncomfortable with simply maximizing snag habitat and wildlife use, particularly if the Flagtail Fire has generated a level of snags that is outside the typical parameters for dry forest types.

In the Final EIS, I asked the wildlife biologist to use both the DecAID snag inventory data and the wildlife use data to help determine an appropriate level of snag habitat to leave. The inventory data in DecAID provides a suggested snag distribution for dry forest types (FEIS, Table WL-7, page 169). The data suggests that the Flagtail project area may currently support snags at a much higher level than would be typically expected in these forest types. In addition, the data suggests that snag levels (snag densities and size) varied greatly across the landscape based on natural site conditions. Some areas likely had high concentrations of snags and other areas had few or no snags. Overall, I feel the inventory data in DecAID provides a good gauge for establishing an appropriate snag distribution in the Flagtail project area.

The Final EIS compares the snag distributions expected for each alternative

with the snag distributions in DecAID. Both the salvage units and the untreated areas in the project area are reflected in the distributions. Alternative 5 comes closest to mimicking the expected snag distribution for dry forest types. Alternatives 1 and 4 do not harvest snags greater than 10 inches DBH resulting in snag densities much higher than would be typically expected in these forest types. Alternative 3 would also leave more snags than would be expected in the dry forest types, and Alternative 2 leaves fewer than would be expected.

Research shows that cavity dependent species select nest sites with higher tree densities and cavity nesters as a group prefer patches of snags as opposed to single snags retained in uniform, even spaced distribution (FEIS, page 177). As stated previously, this desired variation in snag densities is reflected in the DecAID inventory data. Alternatives 3 and 5 were designed to better mimic this uneven pattern. Because of the mosaic pattern of the burn and the desire to retain snags in patches, snags may not be distributed at the 40-acre basis as required by the Forest Plan, which will require a non-significant Forest Plan amendment. The need for a Forest Plan amendment is discussed further in the Forest Plan Consistency Section of this ROD.

I also looked at the number of acres that are not being treated with salvage harvest. Alternative 5 leaves about 40 percent of the existing snag habitat. Alternatives 1 and 4 essentially retain 100 percent of existing snag habitat. Alternative 3 retains about 53 percent and Alternative 2, which does the least to provide untreated habitat, retains about 30 percent.

These untreated areas are particularly important to black-backed woodpeckers and three-toed woodpeckers. These species tend to select nest sites with the highest

snag densities and the least amount of logging. Pulses of snags, particularly those created by wildfire, may function as important source habitat for maintaining populations across the landscape. Because the DecAID snag inventory data may not adequately address these species, Alternatives 3 and 5 establish four 75-acre black-backed/three-toed woodpecker areas in addition to the other untreated areas such as RHCAs.

Soil

Early in the process, several groups raised the concern that tractor logging on soils burned with moderate and high severity would increase erosion. Alternatives 1 and 4 have no commercial harvest and therefore no tractor logging. Alternative 2 would tractor log on 1,410 acres of moderate and high burn severity, and Alternative 3 would tractor harvest on 1,120 acres of moderate and high burn severity. The Selected Alternative would tractor harvest on 1,300 acres of soils with moderate and high burn severity. Before making my decision, I considered the findings of the 1995 Beschta Report, including the recommendation that salvage logging should be prohibited in sensitive areas including severely burned areas because of soil compaction and erosion concerns. Alternative 5 will utilize helicopter and skyline logging systems on steeper slopes so impacts are within Forest Plan standards. No harvest is planned on fragile sites (FEIS, page 395).

I also looked at results of the extensive monitoring completed on the Summit Fire Recovery Project, especially those relating to harvest and erosion. The Summit Fire burned on the Blue Mountain District in the summer of 1996. The soil types, climate, vegetation, and historic fire regime are similar to those in the Flagtail Fire. Results of the Summit monitoring showed that displacement and erosion after skidding on

Record of Decision

a severely burned 40% slope was within Forest Plan standards. McNeil found that skidding caused the export of 0.02 cubic meters of soil from 230 acres of harvest units (FEIS, Appendix E). Davis and coworkers saw no evidence of soil movement from logged, severely burned units on Summit Fire (FEIS, page 230). Several harvest units on the Summit Fire were examined and all were within Forest Plan standards for compaction (FEIS, pages 229-231). Some of the recommendations in the Beschta Report are generally applicable to the Interior Columbia Basin. The results of monitoring harvest activities in the Summit Fire area have shown that harvesting trees in a post fire environment can be accomplished while meeting Forest Plan standards. Alternative 5 also includes mitigation measures such as approval of skid trail location, minimizing skidding on slopes greater than 35%, and utilizing low ground pressure equipment off of skid trails (FEIS, page 72) that will further ensure minimal soil damage.

Water

None of the alternatives proposes to salvage harvest within Riparian Habitat Conservation Areas; however there are opportunities to improve watershed function. All action alternatives close and decommission roads while maintaining access to the same general areas that was available before the fire, but may require additional effort (longer hikes, or use of horses) to access it. Most roads planned for closure or decommissioning are short spur roads. With alternatives 2, 3, and 5, three tenths of a mile of new road will be constructed to replace about 1 mile of road within the Snow Creek RHCA. The road segment in the RHCA will be decommissioned. The new road location will improve water quality in Snow Creek while providing access to the area.

Alternative 4 would not relocate the road in the Snow Creek RHCA.

Only Snow Creek is on the Oregon 303(d) List of Water Quality Limited Waterbodies, and it is listed only for temperature. I have determined that the Selected Alternative does not have the potential to impact this stream. Felling hazard trees and removing 1 culvert will have no measurable effect on Snow Creek; therefore I have determined that no Water Quality Restoration Plan (WQRP) is needed. Several of the components of a WQRP were addressed in the FEIS (see Appendix L).

Scenery

Alternative 2 would further degrade an already impacted visual corridor and would need a site-specific, non-significant Forest Plan amendment that would permit a short-term reduction in the Visual Quality Objective. Alternative 3, 4, and 5 would maintain the existing Visual Quality Objective by leaving a higher snag density in the visual corridor along County Road 63.

Socio-Economics

Recovering the value of fire-killed and dying timber is important for several reasons. First, capturing the economic value of this timber can help offset the cost of fire-related restoration projects such as road reconstruction, road decommissioning, and culvert removal. Second, providing a viable timber sale is important to the local community by providing job opportunities and personal income. While I recognize the importance of economic considerations, and in particular the importance of forest products in the local economy, it is important to balance this with the need to promote recovery.

The No Action alternative does not meet the purpose and need to capture the economic value of the fire-killed trees so I did not find it to be an acceptable alternative. Alternative 2 would provide the highest level of jobs and personal income and has the highest present net value followed by Alternative 5. I did not select Alternative 2 because it would present a potentially greater impact to snag habitat than any other action alternative. Alternative 4 provides for very low economic return, as it would not provide timber harvest-related employment or income, and would not meet the purpose and need to capture economic value of the dead timber. All action alternatives including Alternative 4 would generate jobs associated with restoration activities such as tree planting, snag falling, and other projects.

Ultimately, in selecting an alternative, economic considerations were important in trying to maintain a viable sale, and they were balanced with resource considerations. In accelerating ecosystem recovery of the Flagtail Fire area, I view a timber sale principally as a tool to accomplish resource objectives. My decision to implement Alternative 5 reflects this viewpoint: leaving un-harvested RHCAs to reduce the risk of adverse impacts to streams and aquatic resources; reducing future fuel loading; using helicopter logging on steep slopes to protect soils and water quality; and retaining over 300 acres of un-harvested blocks for snag habitat. These components of Alternative 5 all tend to reduce the harvest volume and value of the salvage sale (and thus its economic contribution), but they are also components that I believe will add substantially to the success of the recovery effort.

Cumulative Effects from Ongoing and Proposed Activities

In deciding to go forward with the Flagtail Fire Recovery Project, particularly Alternative 5, I reviewed the past, ongoing and proposed activities within each resource's cumulative effects area (FEIS, Appendix J). Of particular concern is how these actions may cumulatively affect water quality, fish and wildlife habitat, and listed or sensitive species. I considered the likely effects of these past, ongoing, and future activities in combination with the proposed activities of the Flagtail Fire Recovery Project.

The analysis of effects (Chapter 3, FEIS) did not indicate likely significant cumulative effects from the activities proposed; however, beneficial cumulative effects are expected from recovery projects proposed in addition to the Flagtail Fire Recovery Project.

Early in the Flagtail Fire Recovery analysis process, several projects were identified to assist in the recovery of the Flagtail burned area and move it toward desired conditions. To that end, several watershed restoration projects were proposed in the Flagtail Fire area for completion under separate NEPA decisions. Two restoration projects were signed under the Categorical Exclusion authority and are being implemented (conifer and hardwood planting and protection, and wood addition to channels). Three restoration projects (aspen enhancement, Bald Hills erosion control, and riparian fuel treatment) are proposed and are being analyzed under Categorical Exclusion authority. These activities are enhancing and will enhance recovery of the Flagtail Fire area; the expected results of these projects are included in each resource's discussion of cumulative effects.

Consultation/Conferencing with USFWS and NOAA

No endangered, threatened, or proposed fish or plant species are documented or suspected in the project area (Appendices F and I of the FEIS). Consultation with NOAA or USFWS was not necessary for fisheries or plants because the area contains no Endangered Species Act listed fish or plant species. The Selected alternative is expected to have No Effect on threatened and endangered wildlife species (northern bald eagle, gray wolf, and North American lynx). Based on this, consultation with USFWS was not considered necessary. While consultation was not necessary, NOAA and USFWS were kept informed of proposed activities in the Flagtail Fire Recovery Project.

Legal Requirements and Policy

In reviewing the EIS and actions involved in Alternative 5, I have concluded that my decision is consistent with the following laws and requirements:

The Preservation of American Antiquities Act, June 1906: The Selected Alternative will have no direct effect on heritage resources, due to management requirements, constraints, and mitigation measures (Chapter 2, FEIS). New sites discovered during operations will be protected by provisions in the timber sale contract (C6.24#). Indirect effects of the selected alternative are mainly beneficial to heritage resources except in locations where avoidance of heritage resources could leave these resources exposed and vulnerable to runoff (FEIS, Chapter 3).

The National Historic Preservation Act: This project will have no adverse effects on heritage resources. The Inventory Report

has been completed and signed by the Forest Archaeologist under the Programmatic Agreement among the United States Department of Agriculture, Forest Service, Pacific Northwest Region (Region 6), the Advisory Council on Historic Preservation, and the Oregon State Historic Preservation Officer regarding Cultural Resource Management on National Forests in the State of Oregon, dated March 10, 1995. This is in compliance with section 106 of the National Historic Preservation Act.

The mitigation measures for historic railroad grades in the Flagtail Project area were derived from the Programmatic Memorandum of Agreement (PMOA) for the Management of Historic Railroad Systems for the Wallowa-Whitman National Forest. The Malheur N.F. was provided authority to utilize this PMOA in the 1995 Programmatic Agreement with SHPO. Based on using these mitigation measures, there will be no adverse effects to historic railroad grades.

The National Environmental Policy Act (NEPA), 1969: NEPA establishes the format and content requirements of environmental analysis and documentation, such as the Flagtail Fire Recovery Project. The entire process of preparing an environmental impact statement was undertaken to comply with NEPA.

The Endangered Species Act of 1973, as amended: While biological evaluations were prepared to document possible effects of proposed activities on endangered and threatened species in the Flagtail Fire area, Biological Assessments were not necessary. The Selected Alternative is expected to have No Effect on threatened and endangered wildlife species. Based on the lack of endangered, threatened, or proposed fish or plant species in the Flagtail Project area, and "No Effects" calls for wildlife, consultation with NOAA or USFWS was

not considered necessary. While consultation was not needed, NOAA and USFWS were kept informed of proposed activities in the Flagtail Fire Recovery Project (FEIS, page 221, and Appendix D).

The National Forest Management Act (NFMA), 1976: The Selected Alternative was developed to be in full compliance with NFMA (FEIS, Consistency with NFMA Requirements, page 113).

Clean Air Act Amendments, 1977: The Selected Alternative is designed to meet the National Ambient Air Quality standards through avoidance of practices that degrade air quality below health and visibility standards. All burning will be done in accordance with the Oregon State Smoke Management Plan and the Oregon State Implementation Plan in order to ensure that clean air requirements are met (FEIS, pages 130-132).

The Clean Water Act, 1982: The Selected Alternative will meet and conform to the Clean Water Act as amended in 1982 (FEIS, pages 286-287). This act establishes a non-degradation policy for all federally proposed projects. The Selected Alternative meets anti-degradation standards agreed to by the State of Oregon and the Forest Service, Region 6, in a Memorandum of Understanding (Forest Service Manual 1561.5). This will be accomplished through planning, application, and monitoring of Best Management Practices (BMPs). Site-specific BMP systems have been designed to protect beneficial uses (Chapter 2, Management Requirements, Constraints, and Mitigation Measures of the FEIS).

Satisfaction of State Forest Worker Safety Codes: The Oregon Occupational Safety and Health Code for Forest Activities (OAR 437, Division 6) regulations will be met when the Preferred Alternative is implemented. Salvage strategies are designed to provide for worker safety by

providing for appropriately sized openings to facilitate safe operation of yarding equipment or by clumping dead trees that are retained. Removal of hazard trees along haul routes will meet OSHA standards for danger trees.

Other Policy or Guiding Documentation

Biological Evaluations were prepared to assess potential effects to sensitive species as identified by the Regional Forester. These evaluations determined that while there may be impacts to individual sensitive species, those effects are not likely to contribute to a trend towards federal listing or loss of viability of the population or species, and in some cases would beneficially impact species (FEIS, Appendices D, G, and I).

The Malheur National Forest Land and Resource Management Plan, as amended, provided the framework for the development of all the alternatives.

The fire impacted the Flagtail, Jack Creek, and Scotty Creek allotments. The areas burned within these allotments are planned for rest for at least 2 years in compliance with the Post-Fire Grazing Interim Guidelines for the Malheur National Forest (FEIS, page 340, and Appendix H)

I have reviewed the scientific assessment from the Interior Columbia Basin Ecosystem Management Project (ICBEMP) and have incorporated principles from it. My decision was based on using active management to restore a burned area that is not capable of recovering in a time period I find acceptable.

Public Participation

The NEPA scoping process (40 CFR 1501.7) was used to invite public participation, to

Record of Decision

refine the scope of this project, and to identify preliminary issues to be addressed. I sought information, comments, and assistance from Federal, State, and local agencies, the tribes, and other groups and individuals interested in or affected by the Proposed Action. The scoping period lasted 30 days. The public was provided numerous opportunities to participate in the Flagtail Fire Recovery Project. For additional discussion and details, see the FEIS, pages 28-29, and pages 404 -405.

In response to the DEIS, 14 written comments were received (FEIS, page 405). Responses to these comments are found in Chapter 4 of the FEIS, which was released to the public in March 2004.

The Environmentally Preferable Alternative

In this ROD, I have described the Selected Alternative and given rationale for its selection. It is also required by law that one or more environmentally preferable alternatives be disclosed. The environmentally preferable alternative is not necessarily the alternative that will be implemented and it does not have to meet the underlying need for the project. It does, however, have to cause the least damage to the biological and physical environment and best protect, preserve, and enhance historical, cultural, and natural resources [Section 101 NEPA; 40 CFR 1505.2(b)].

Alternative 5 causes the least damage to these resources and is the environmentally preferable alternative. The pre-fire stands were systems out of balance with the historic condition. There were too many trees per acre and the species mix could not be sustained over generations given the historic disturbance patterns. Alternatives 1 and 4 would have left the landscape in a condition potentially set up for another

uncharacteristic wildfire once the standing fuels had fallen. Alternative 2 would have left few snags scattered across the landscape, and Alternative 3 would have left snags in a homogeneous pattern across the entire project area. Alternative 5 leaves a diversity of snag densities across the landscape that more closely resembles historic patterns. Low densities of snags will be left in the wildland urban interface area while higher densities will be concentrated in the visual corridor to mitigate the scenic impacts while also addressing habitat needs. This alternative will result in decommissioning of about 13 miles of road including 4 miles immediately adjacent to Snow Creek. Three tenths of a mile of new upland construction will allow continued access to the area. Riparian areas will not be entered for commercial harvest, as they are not the areas of high concentrations of standing dead fuel. Reforestation will ensure that the area is stocked with the appropriate conifer species for each site. While logging systems will cause some adverse soil impacts, those impacts are within Forest Plan standards and will not significantly set back ecological recovery of the area.

Management Requirements, Constraints, and Mitigation Measures

Management requirements, constraints, and mitigation measures are site-specific management activities designed to reduce the adverse impacts of timber harvest and associated activities. Management requirements, constraints, and mitigation measures will be applied to project design and layout, in timber sale contracts, and permit requirements. Management requirements, constraints, and mitigation measures will be implemented through

project design, contract specifications, contract administration, and monitoring by Forest Service officers.

As part of my decision, I am choosing to implement the management requirements, constraints, and mitigation measures identified in the EIS (FEIS, pages 69-81). I am confident that selected management requirements, constraints, and mitigation measures will minimize adverse effects for the following reasons: the selected mitigation measures are practices we have used successfully in the past; they are State-recognized best management practices for protecting water quality; or they are based on current research (e.g., the snag management approach). I have decided to monitor the implementation of these measures and, in some instances, to monitor their effectiveness, as described in Chapter 2 of the FEIS (pages 81-83) and in the following section.

Monitoring

Resource monitoring of the Flagtail Fire Recovery Project will be implemented with Alternative 5. The objectives of monitoring are: 1) to assure that all aspects of the project are implemented as intended; 2) to determine, for certain critical activities, that the effects of the activities are consistent with the intent; and 3) to allow adaptation if it is found that activities are not being implemented correctly or are not having the desired effects. For example, if monitoring of goshawk nests and territories indicates goshawks are nesting in the area, the result of that monitoring would be used to apply appropriate seasonal restrictions.

The following monitoring items are a part of my decision. Additional details of the monitoring items may be found in the FEIS (pages 81-83).

- Monitor vegetation including tree marking and tree planting;
- Monitor soil for detrimental soil impact;
- Monitor watershed and fisheries habitat, including implementation and effectiveness of Best Management Practices (BMPs), unit boundaries along RHCAs, road decommissioning, closure, and reconstruction activities, sedimentation, and stream channel attributes;
- Monitor for scenery concerns about slash in the foreground;
- Monitor to determine if livestock grazing may be reinitiated after 2 growing seasons;
- Monitor non-native seed duration;
- Monitor to assure that goshawk timing restrictions are applied correctly.

Forest Plan Consistency

While I believe Alternative 5 to be consistent with long-term management objectives as discussed in the Malheur National Forest Plan, there are two aspects of Alternative 5 that are inconsistent with existing standards and guidelines. In order to permit prompt and necessary fuels reduction activities, I have decided to amend one Forest Plan standard and Management Area (MA) designations for this specific project:

1. Snag distribution, and
2. Old Growth Designation.

Non-Significant Forest Plan Amendment #56

The purpose of this non-significant amendment is to allow for short term management activities that are not consistent with current Forest Plan direction.

Record of Decision

Snag Distribution

In Alternative 5 snag prescriptions vary by unit in an attempt to mimic snag distributions at a landscape level as recommended by the research described in DecAID (Mellen et al. 2003). Because of the mosaic pattern of the burn and the desire to retain snags in patches, snags may not be distributed at the 40-acre block basis as required by the Forest Plan. Thus, this alternative may not meet Forest Wide Standard and Guideline #39. The amendment to Forest Wide Standard and Guideline #39 is the following: "For the Flagtail Fire Recovery Project, within the project area, snags may not be evenly distributed on a 40-acre basis; snags in salvage units will be retained in a combination of dispersed snags and untreated patches sufficient to provide prescribed levels of snags at a landscape level."

Dedicated and Replacement Old Growth Areas

Alternative 5 was designed, in part, to replace Dedicated Old Growth (DOG) that is now unsuitable due to the fire. It is my decision to amend Management Area designations to create a new DOG 220 and convert the old DOG 220 to Replacement Old Growth (ROG) 220. I have also decided to relocate DOG 221 and ROG 221 to an area outside the fire perimeter and convert the original acres in DOG/ROG 221 (now MA-13) to MA-1.

These designations will increase the total acres of DOG by 34 acres, and ROG by 365 acres. The increase in DOG is related to the logical delineation of the DOG boundary to include entire stands in the DOG. The increased acres of ROG are mainly related to the designation of ROG for DOG 220 as directed by Standard 5 for Management Area 13 (MA 13). This ROG is designated

to counter possible catastrophic damage or deterioration of the newly designated DOG.

Post-fire, there is essentially no mature or old growth habitat remaining that meets pileated woodpecker, pine marten or three-toed woodpecker habitat requirements based on the current Forest Plan guidelines. The DOG and ROG areas are no longer functioning as old growth. Stands have been converted to understory re-initiation (UR) and stand initiation (SI) structural stages. The relocation of Dedicated Old Growth (DOGs) and relocation/designation of Replacement Old Growth (ROGs) should better maintain the integrity of the Forest's old growth network.

Determination that the Forest Plan Amendment is Not Significant Under NFMA

I have determined that this amendment is not a significant amendment under the National Forest Management Act implementing regulations [36 CFR 219.10(f)]. In reaching this conclusion, I considered the following factors [from Forest Service Handbook (FSH) 1909.12]:

Timing

A change is less likely to result in a significant plan amendment if the change takes place after the plan period (first decade). The proposed changes are taking place after the first decade of the current 1990 plan, but will be enacted before the next scheduled revision. The next scheduled revision of the Malheur Forest Plan has begun with an anticipated completion date of 2007. Therefore, the timing of the two changes in this amendment is not significant because of how late this change is occurring under current Forest Plan direction.

Location and size

The smaller the area affected, the less likely the change is to be a significant change to the Forest Plan. The Flagtail Fire impacted 7,120 acres on the Malheur National Forest (1,467,473 acres). The snag distribution portion of the amendment affects 3,920 acres that are in harvest units in the Flagtail Fire Project Area or less than 0.3 percent of the National Forest System Lands covered by the Malheur Forest Plan. The snag distribution analysis was done using the DecAID tool. It is unlikely that application of information in DecAID in the Flagtail Fire area will lead to a blanket snag strategy applied uniformly over the Forest. Snag prescriptions are based on site-specific information such as biophysical environment, productivity and capability of the land to produce trees, and existing snag levels and distribution at the landscape level. Changes in any of these variables would result in a different snag prescription. For example, in a non-fire situation in dry forest types, the snag levels would likely be much lower. This amendment is non-significant because it applies only to this fire area and each situation requires a site-specific application.

This amendment will increase the total acres of DOG by 34 acres, and ROG by 365 acres. The result is a total increase of 399 acres in MA-13, and a subsequent reduction of MA 1 by 399 acres. Currently, there are 543,592 acres in MA 1; this reduction is less than a 0.1 percent change. The location and size of this amendment is not significant when compared with the Forest as a whole.

Goals, objectives, and outputs

An action is more likely to be a significant Forest Plan amendment if it alters the long-term relationship between the levels of goods and services projected by the Forest Plan and particularly if it would forego the opportunity to achieve an output in later years. The amendments are part of my

decision to accelerate recovery of the fire area, and do not change any goals and objectives stated in the Forest Plan.

Leaving variable densities of snags across the fire area will better meet the needs of burned habitat dependent species. The use of DecAID, considered the newest science, provides a strategy for this area that uses site-specific data and results in a prescription that is tailored to the capabilities of the plant association groups found in the fire area.

The manipulation of DOGs and ROGs will implement the direction found at IV-105 in the Forest Plan. The decrease of General Forest acres (MA 1) by 399 acres from the current total of approximately 543,592 is less than a 0.1 percent Forest-wide acreage change.

There is a relationship between MA 1 acres and the allowable sale quantity (ASQ) under the current Forest Plan; however, the decrease in acres does not mean that there will be a corresponding decrease in ASQ. The Forest Plan does allow scheduled timber harvest in ROGs that “maintain or enhance the capability of timber stands to provide suitable old-growth habitat in the future” (Forest Plan, page IV-106).

I have also considered this decrease in relation to the cumulative effects of other changes to MA 1 acreage from the other amendments to the Forest Plan. The Forest Plan estimated 553,053 acres of MA 1 in 1990; there will be approximately 543,193 acres with this decision. This is less than a 1 percent cumulative change in MA 1 acres. As the Chief determined in his September 10, 1984 appeal decision for the San Juan and Grand Mesa, Uncompahgre and Gunnison National Forest plans, there is no assurance that projected Forest Plan outputs will occur due to limitation of modeling, changes in law and regulations, changes in

Record of Decision

economic conditions, changes in budgets, site-specific conditions, and other situations. Therefore, this reduction of MA 1 acres is an insignificant change to the potential timber output or other services for the Malheur National Forest.

Management prescription

A change is more likely to require a significant amendment if it would apply to future decisions throughout the planning area. The amendment associated with Alternative 5 is just for this project. The changes would not affect future actions.

The change in snag densities applies only to this planning effort. The changes would not affect future action and meets the desired future conditions for snag habitat by providing conditions that more closely resemble levels found in these plant association groups.

Although the changes to the DOGs and ROGs will apply to future management in and immediately adjacent to the planning area, it will not alter the desired future condition of the land and resources, standards and guidelines, or the anticipated goods and services to be produced. The decision complies with Forest Plan standards for MA 13. It will also contribute to Forest Plan goals to maintain or enhance ecosystem functions and provide connective and old growth habitat for old growth dependent species. The planned activities will not detract from or jeopardize any of the Forest Plan goals because of the small magnitude of change, less than 1 percent decrease in MA 1 acreage Forest-wide. This change is insignificant.

Other Factors

After review of the environmental impact statement and project record, I have determined that there are no other factors

or unique circumstances affecting the Forest Plan from this amendment.

Since I have determined that there is not significant change based on the factors, I conclude that this amendment is not a significant change to the overall Forest Plan direction as defined in the 1990 Malheur Land and Resource Management Plan and its Record of Decision, as amended. Therefore, an environmental impact statement for a forest plan revision following the 10 step planning process found at 36 CFR 219.12 does not need to be prepared.

Consistency with NFMA Requirements

In all other respects, I find this decision to be consistent with the Malheur Forest Plan and with the requirements of the National Forest Management Act implementing regulations; specifically:

Silvicultural Practices

In Alternative 5, there is no timber salvage on lands classified as unsuitable for timber production. Forest Plan amendment #56 (described above) makes this possible by re-designating areas of MA-13 (classified “unsuitable”), allowing harvest in previously unsuitable areas. Alternative 5, in conjunction with Forest plan amendment #56 is consistent with 36 CFR 219.27(c)(1).

Even-aged Management/Clearcutting

The Selected Alternative includes reforestation and salvage of timber killed by a catastrophic wildfire. According to the requirements of 36 CFR 219.27(d) and 16 USC 1604(k), the limits on opening size do not apply because the opening is a result of natural catastrophic conditions. The reforestation of the openings will result in even-aged stands where the fire killed all the live trees.

Vegetative Manipulation/Management Requirements

The selected action is consistent with the seven management requirements from 36 CFR 219.27 and the vegetation requirements from 36 CFR 219.27(b).

Maintaining Viable Populations of Fish and Wildlife Species

The selected action is consistent with the viable population requirements of 36 CFR 219.19.

Implementation

I have reviewed the Flagtail Fire Recovery Project FEIS, and its associated appendices. I feel there is adequate information within these documents to provide a reasoned choice of action. I am fully aware of the possible adverse environmental effects that cannot be avoided, and the irreversible/irretrievable commitment of resources associated with the Selected Alternative. I have determined that these risks will be outweighed by the likely benefits. Implementing the Selected Alternative will cause no unacceptable cumulative impact to any resource. There will be no significant impact to cultural resources, consumers, civil rights, minority groups, or women. There are no unusual energy requirements for implementing the Selected Alternative. The FEIS adequately documents how compliance with these requirements is achieved (FEIS Vol 1, Chapter 3).

The implementation schedule for Alternative 5 is displayed in Table 2-4, page 86 of the FEIS. For some activities, the rate of implementation may vary depending on funding received.

Since the emergency situation status was granted on February 13, 2004, I have adjusted the implementation plan based on

updated information. In the request submitted in December 2003, the entire acreage associated with the Selected Alternative was requested for exemption. Since that time, I have been able to update information on stand condition. Several units in the Flagtail area burned at a lower intensity, and many of the dead trees in these areas have retained their needles and bark longer. This has allowed the trees to deteriorate at a slower rate; therefore rapid removal is not as critical. I will implement the exemption only on the units most susceptible to value loss in the Flagtail Timber Sale. There are 3 other sales that will be implemented at a later date due to the slower deterioration rate.

Procedure for Change During Implementation

Minor changes may be needed during implementation to better meet on-site resource management and protection objectives.

In determining whether and what kind of further NEPA action is required, the Responsible Official will consider the criteria for whether to supplement an existing Environmental Impact Statement in 40 CFR 1502.9(c) and FSH 1909.15, sec. 18, and in particular, whether the proposed change is a substantial change to the intent of the Selected Alternative as planned and already approved, and whether the change is relevant to environmental concerns. Connected or interrelated proposed changes regarding particular areas or specific activities will be considered together in making this determination. The cumulative impacts of these changes will also be considered.

The intent of field verification prior to my decision was to confirm inventory data and to determine the feasibility and general design and location of a road or unit, not to

Record of Decision

locate the final boundaries or road locations. For example, salvage unit prescriptions may be modified if site conditions dictate and if other resource objectives can be met. Minor adjustments to unit boundaries may be needed during final layout for resource protection, to improve logging system efficiency, and to better meet the intent of my decision. Many of these minor changes will not present sufficient potential impacts to require any specific documentation or action to comply with applicable laws.

Appeal Rights

Organizations or members of the general public may appeal my decision according to Title 36 CFR Part 215. The 45-day appeal period begins the day following the date the legal notice of this decision is published in the *Blue Mountain Eagle*, John Day, Oregon, the official newspaper of record. The Notice of Appeal must be filed with the Reviewing Officer at:

Appeal Deciding Officer
Pacific Northwest Region
USDA Forest Service
Attn. 1570 Appeals
333 S.W. First Avenue
PO Box 3623
Portland, OR 97208-3623

Appeals can also be filed electronically at: appeals-pacificnorthwest-regionaloffice@fs.fed.us or hand delivered to the above address between 7:45 AM and 4:30 PM, Monday through Friday except legal holidays. The appeal must be postmarked or delivered within 45 days of the date the legal notice for this decision appears in the *Blue Mountain Eagle* newspaper. The publication date of the legal notice in the *Blue Mountain Eagle* newspaper is the exclusive means for calculating the time to file an appeal and those wishing to appeal should not rely on

dates or timeframes provided by any other source.

Electronic appeals must be submitted as part of the actual e-mail message, or as an attachment in Microsoft Word (.doc), rich text format (.rtf) or portable document format (.pdf) only. E-mails submitted to e-mail addresses other than the one listed above or in other formats than those listed or containing viruses will be rejected. Only individuals or organizations who submitted substantive comments during the comment period may appeal.

It is the responsibility of those who appeal a decision to provide the Regional Forester sufficient written evidence and rationale to show why my decision should be changed or reversed. The appeal must be filed with the Appeal Deciding Officer § 215.8 in writing. At a minimum, an appeal must include the following:

1. Appellant's name and address (§ 215.2), with a telephone number, if available;
2. Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the appeal);
3. When multiple names are listed on an appeal, identification of the lead appellant (§ 215.2) and verification of the identity of the lead appellant upon request;
4. The name of the project or activity for which the decision was made, the name and title of the Responsible Official, and the date of the decision;
5. The regulation under which the appeal is being filed, when there is an option to appeal under either this part or part 251, subpart C (§ 215.11(d));
6. Any specific change(s) in the decision that the appellant seeks and rationale for those changes;

7. Any portion(s) of the decision with which the appellant disagrees, and explanation for the disagreement;
8. Why the appellant believes the Responsible Official's decision failed to consider the substantive comments and;
9. How the appellant believes the decision specifically violates law, regulation, or policy.

On February 13, Forest Service Regional Forester, Linda Goodman determined the Flagtail Fire Recovery Project to be an emergency situation and exempted it from stay pursuant to 36 CFR 215.10. This means that my decision may be implemented immediately following publication in the

Blue Mountain Eagle, the newspaper of record. This emergency exemption is based on the economic value the government would lose if the project were delayed during the appeal period. The value loss is estimated at over \$448,000. The exemption from stay during the appeal period only applies to the units at risk of rapid deterioration loss. The units not exempt from stay include: 1, 7, 26, 48, 69, 73, 75, 77, 78, 81, 104, 114, 120, 123, 124, 125, 134, 144, 146, 148, 152, 154, 174, 178, and 180 for a total of 933 acres. These units will be implemented 50 days after this legal notice if no appeal is received or if an appeal is received, the units will be implemented 15 days after the appeal decision.

Contact Persons

For additional information concerning the specific activities authorized with my decision, please contact:

Linda Batten
IDT Leader
Blue Mountain Ranger District
P.O. Box 909
John Day, OR 97845
(541) 575-3000

Steve Cossette
Forest NEPA Coordinator
Malheur National Forest Supervisor's Office
P.O. Box 909
John Day, OR 97845
(541) 575-3000

ROGER W. WILLIAMS
Forest Supervisor
Malheur National Forest

Date